

CHAPTER 26
MONITORING, CIVIL PENALTIES, COMPLAINTS AND INVESTIGATION
FOR ELDER GROUP HOMES, ADULT DAY SERVICES AND
ASSISTED LIVING PROGRAMS

321—26.1(17A,231B,231C,231D) Monitoring.

26.1(1) The department of inspections and appeals (DIA) shall monitor a certified program at least once during the program's certification period.

26.1(2) All records and areas of the program deemed necessary to determine compliance with the requirements for certification under 321—Chapters 24, 25 and 29 shall be accessible to DIA for purposes of monitoring.

321—26.2(17A,231B,231C,231D) Complaint procedure.

26.2(1) The process for filing a complaint is as follows:

a. Any person with concerns regarding the operations and service delivery of a program may file a complaint with the Department of Inspections and Appeals, Adult Services Bureau, Lucas State Office Building, Third Floor, 321 E. 12th Street, Des Moines, Iowa 50319-0083, or by use of the complaint hotline, telephone 1-877-686-0027. The Web site address is https://dia-hfd.iowa.gov/DIA_HFD/Home.do.

b. When the nature of the complaint is outside of DIA authority, DIA shall forward the complaint, or refer the complainant, to the appropriate investigatory entity.

c. Complaints related to elder group homes and assisted living programs may also be filed in the office of the long-term care resident's advocate as set forth in Iowa Code Supplement section 231.42.

26.2(2) The complaint shall include the complainant's name, address and telephone number; the complainant's relationship to the program, tenant or participant; and the reason for the complaint. DIA shall act on anonymous complaints unless DIA determines that the complaint is intended to harass the program. If DIA, upon preliminary review, determines that the complaint is intended as harassment or is without reasonable basis, DIA may dismiss the complaint.

26.2(3) Upon receipt of a complaint made in accordance with this rule, DIA shall make a preliminary review of the complaint to determine if a potential violation of 321—Chapter 24 for adult day services programs or 321—Chapter 25 for assisted living programs, or 321—Chapter 29 for elder group homes, as applicable, exists. If a potential violation exists, DIA shall make or cause to be made an on-site investigation of the program within 20 working days unless there is the possibility of immediate danger, in which case the investigation for elder group homes shall be completed within 24 hours of the receipt of the complaint and investigations for adult day services or assisted living programs shall be completed within 48 hours.

26.2(4) For any credible report of alleged improper or inappropriate conduct or conditions within an accredited program, DIA shall:

a. Promptly investigate the allegation.

b. Take certification enforcement action, as appropriate, in accordance with this chapter.

c. Notify the accrediting entity by the most expeditious means possible of any actions taken by DIA with respect to certification enforcement.

26.2(5) DIA shall apply a preponderance-of-evidence standard in determining whether or not a complaint is substantiated.

26.2(6) DIA shall notify the department, the program, and, if known, the complainant, of the results of the complaint investigation as follows:

a. If regulatory insufficiencies are identified as a result of the complaint investigation, DIA shall issue a report of the findings to the program by certified mail within 20 working days. The program shall be required to submit a plan of correction to DIA within 10 working days following receipt of the report. DIA shall determine the program's compliance with applicable requirements contained in Iowa Code Supplement chapter 231B, 231C or 231D and 321—Chapter 24, 25 or 29, whichever is applicable, within 10 working days of receiving an acceptable plan of correction and shall determine whether any enforcement action related to continued certification is necessary.

b. If no regulatory insufficiencies are identified as a result of the complaint investigation, DIA shall issue a report of the findings within 15 days following the on-site investigation.

321—26.3(17A,231B,231C,231D) Enforcement action. DIA may take the following actions as a result of noncompliance with Iowa Code Supplement chapters 231B, 231C and 231D and rules promulgated by the Iowa department of elder affairs.

26.3(1) In lieu of denial, suspension or revocation, DIA may issue a conditional certification for a period of up to one year. In the issuance of a conditional certification, DIA shall specify the issues of noncompliance and the period of time required to comply with each issue. At any time up to 10 working days following the required compliance period, the program shall provide written notification to DIA of the program's compliance with requirements. Following receipt of the program notification, DIA shall make a final certification decision and may conduct an on-site monitoring evaluation to verify compliance prior to making the final decision. Failure by the program to submit timely notification of compliance to DIA shall result in suspension or revocation of the conditional certification and may result in further enforcement action as available under Iowa Code Supplement chapter 231B, 231C or 231D and 321—Chapter 24, 25 or 29, whichever is applicable. DIA shall notify the program of a final certification decision within 15 working days following receipt of the program notification or on-site monitoring evaluation, whichever is later, or following the program's failure to timely notify DIA of compliance.

26.3(2) Civil penalty for adult day services and assisted living programs. If a program continues to fail or refuses to comply, DIA may assess a civil penalty, which shall be paid to DIA within ten working days following assessment, as follows:

a. A program in noncompliance with Iowa Code Supplement chapter 231C or 231D and 321—Chapter 24 or 321—Chapter 25, whichever is applicable, that results in imminent danger or a substantial probability of resultant death or physical harm to a participant or tenant, up to but not to exceed \$10,000.

b. Following receipt of notice from DIA, a program which fails or refuses to comply with Iowa Code Supplement chapter 231C or 231D and 321—Chapter 24 or 321—Chapter 25, whichever is applicable, within prescribed time frames set out by DIA when such noncompliance has a direct relationship to the health, safety, or security of program participants or tenants, up to but not to exceed \$5,000.

321—26.4(17A,231B,231C,231D) Notice—hearings.

26.4(1) The denial, suspension, or revocation of a certificate shall be effected by delivering to the applicant or certificate holder by restricted certified mail, return receipt requested, or by personal service, a notice setting forth the particular reasons for such action. Such denial, suspension, or revocation shall become effective 30 days after the mailing or service of the notice, unless the applicant or certificate holder, within such 30-day period, gives written notice to DIA requesting a hearing, in which case the notice shall be deemed to be suspended.

26.4(2) The hearing shall be conducted by the administrative hearings division of DIA pursuant to 481—Chapter 10.

26.4(3) At any time at or prior to the hearing, DIA may rescind the notice of the denial, suspension, or revocation upon receipt of satisfactory evidence that the reasons for the denial, suspension, or revocation have been or will be removed.

321—26.5(17A,231C,231D) Appeals. All appeals authorized under Iowa Code Supplement section 231C.11 or 231D.6 shall be conducted pursuant to 481—Chapter 10.

321—26.6(17A,231B,231C,231D) Judicial review. Procedures for judicial review shall be conducted pursuant to 481—Chapter 10.

321—26.7(17A,21,231B,231C,231D) Public disclosure of findings. The program shall post a notice in a prominent public location in the facility stating that copies of the final report resulting from a monitoring evaluation or a complaint investigation are available upon request. Copies shall be available upon request from the Department of Inspections and Appeals, Adult Services Bureau, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0083, telephone (515)281-6325.

321—26.8(17A,231C,231D) Discrimination or retaliation. A tenant of an assisted living program or a participant of an adult day services program, a legal representative or family member of a tenant or participant, if applicable, or an employee of the program may file a complaint with DIA if any person has been the subject of discrimination or retaliation as prohibited by Iowa Code Supplement section 231C.13 or 231D.12. DIA shall follow the complaint procedures outlined in 26.2(17A,231B,231C,231D). A program found in violation of Iowa Code Supplement section 231C.13 or 231D.12 shall be assessed a civil penalty of \$1,000, which shall be paid to DIA within ten working days following assessment.

321—26.9(17A,231C,231D) Emergency removal of adult day services participants or assisted living tenants. If DIA determines that the health or safety of participants in an adult day services program or tenants in an assisted living program is in immediate danger and the tenants or participants need to be removed from the program, DIA shall use the following procedures to ensure a safe and orderly transfer.

26.9(1) DIA shall notify the local area agency on aging; the departments of elder affairs, human services, public health, and transportation; law enforcement agencies; and the tenant advocate, as necessary and appropriate, for the following:

- a.* To alert them to the need to transfer participants or tenants from a program;
- b.* To request assistance in identifying alternative programs or other appropriate settings; and
- c.* To contact the participants or tenants and their legal representatives or family members, if applicable, and others as appropriate, including health care professionals.

26.9(2) DIA shall notify the program on site of the immediate need to transfer participants or tenants and of assistance available, in coordination with the appropriate parties under 26.9(1).

26.9(3) DIA shall proceed with the transfer of participants or tenants.

26.9(4) DIA may suspend a program's certification prior to a hearing.

321—26.10(231C,231D) Notification of casualties. DIA shall be notified by telephone within 24 hours of casualties in adult day services and assisted living programs, and may request a written report following notification, in the following situations:

26.10(1) Any accident or incident causing substantial injury to or death of a participant or tenant.

26.10(2) When damage to the program as a result of fire, natural or other disaster impairs the program's ability to function.

These rules are intended to implement Iowa Code chapters 17A and 21 and Iowa Code Supplement chapters 231B, 231C and 231D.

[Filed 3/26/04, Notice 12/10/03—published 4/14/04, effective 5/19/04]

[Filed 9/10/04, Notice 7/21/04—published 9/29/04, effective 11/3/04]

[Filed emergency 10/22/04—published 11/10/04, effective 11/3/04]